

AMENDED IN SENATE APRIL 2, 2008

SENATE BILL

No. 1243

Introduced by Senator Correa

February 15, 2008

An act to amend Section 2972 of the Penal Code, relating to mentally disordered offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, as amended, Correa. Mentally disordered offenders: recommitment hearing.

Existing law provides procedures for involuntary commitment to a medical facility for persons who were released to parole, whose parole has expired, and who require continued medical treatment for mental disorders. Existing law requires a court to conduct a hearing on a petition for involuntary *continued* commitment.

This bill would provide that ~~the Department of Mental Health is not required to perform a certain evaluation of the patient in order for the prosecuting attorney to file that petition. The bill would specify the contents of that petition, and would provide that failure to timely file a petition for recommitment shall not be grounds for the release of the patient if good cause is shown for the failure~~ *an appropriate medical professional must submit to the prosecuting attorney an opinion on the person's mental status not later than 180 days prior to the end of that period of confinement. This bill would authorize the prosecuting attorney to file a petition for extended commitment and would specify the procedure for the filing of the petition.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2972 of the Penal Code is amended to
2 read:

3 2972. (a) The court shall conduct a hearing on the petition
4 under Section 2970 for continued treatment. The court shall advise
5 the person of his or her right to be represented by an attorney and
6 of the right to a jury trial. The attorney for the person shall be given
7 a copy of the petition, and any supporting documents. The hearing
8 shall be a civil hearing, however, in order to reduce costs the rules
9 of criminal discovery, as well as civil discovery, shall be
10 applicable.

11 The standard of proof under this section shall be proof beyond
12 a reasonable doubt, and if the trial is by jury, the jury shall be
13 unanimous in its verdict. The trial shall be by jury unless waived
14 by both the person and the district attorney. The trial shall
15 commence no later than 30 calendar days prior to the time the
16 person would otherwise have been released, unless the time is
17 waived by the person or unless good cause is shown.

18 (b) The people shall be represented by the district attorney. If
19 the person is indigent, the county public defender shall be
20 appointed.

21 (c) If the court or jury finds that the patient has a severe mental
22 disorder, that the patient's severe mental disorder is not in
23 remission or cannot be kept in remission without treatment, and
24 that by reason of his or her severe mental disorder, the patient
25 represents a substantial danger of physical harm to others, the court
26 shall order the patient recommitted to the facility in which the
27 patient was confined at the time the petition was filed, or
28 recommitted to the outpatient program in which he or she was
29 being treated at the time the petition was filed, or committed to
30 the State Department of Mental Health if the person was in prison.
31 The commitment shall be for a period of one year from the date
32 of termination of parole or a previous commitment or the scheduled
33 date of release from prison as specified in Section 2970. Time
34 spent on outpatient status, except when placed in a locked facility
35 at the direction of the outpatient supervisor, shall not count as
36 actual custody and shall not be credited toward the person's
37 maximum term of commitment or toward the person's term of
38 extended commitment.

1 (d) A person shall be released on outpatient status if the
2 committing court finds that there is reasonable cause to believe
3 that the committed person can be safely and effectively treated on
4 an outpatient basis. Except as provided in this subdivision, the
5 provisions of Title 15 (commencing with Section 1600) of Part 2,
6 shall apply to persons placed on outpatient status pursuant to this
7 paragraph. The standard for revocation under Section 1609 shall
8 be that the person cannot be safely and effectively treated on an
9 outpatient basis.

10 ~~(e) Prior to the termination of a commitment under this section,~~
11 ~~a petition for recommitment may be filed to determine whether~~
12 ~~the patient's severe mental disorder is not in remission or cannot~~
13 ~~be kept in remission without treatment, and whether by reason of~~
14 ~~his or her severe mental disorder, the patient represents a~~
15 ~~substantial danger of physical harm to others. The petition shall~~
16 ~~specify that the patient has a severe mental disorder, that the severe~~
17 ~~mental disorder is not in remission or cannot be kept in remission~~
18 ~~if the person's treatment is not continued, and that, by reason of~~
19 ~~his or her severe mental disorder, the patient represents a~~
20 ~~substantial danger of physical harm to others. The Department of~~
21 ~~Mental Health is not required to perform the evaluation required~~
22 ~~by Section 2970 in order for the prosecuting attorney to file a~~
23 ~~petition pursuant to this subdivision. Failure to file a petition for~~
24 ~~recommitment under this section shall not be grounds for the~~
25 ~~release of the patient if good cause is shown for that failure. The~~
26 ~~recommitment proceeding shall be conducted in accordance with~~
27 ~~the provisions of this section.~~

28 *(e) Not later than 180 days prior to the termination of*
29 *commitment under this section, the medical director of a state*
30 *hospital in which the person is being treated, or the medical*
31 *director of the person's treatment facility or the local program*
32 *director, if the person is being treated outside a state hospital*
33 *setting, shall submit to the prosecuting attorney his or her opinion*
34 *as to whether or not the patient's severe mental disorder is in*
35 *remission or can be kept in remission without treatment, and*
36 *whether or not by reason of his or her severe mental disorder, the*
37 *patient represents a substantial danger of physical harm to others.*
38 *If requested by the prosecuting attorney, the opinion shall be*
39 *accompanied by supporting evaluations and relevant hospital*
40 *records. The prosecuting attorney may then file a petition for*

1 *extended commitment in the superior court that issued the original*
2 *commitment. The petition shall be filed prior to the termination of*
3 *a commitment under this section unless good cause is shown. The*
4 *petition shall state the reasons for the extended commitment, with*
5 *accompanying affidavits specifying the factual basis for believing*
6 *that the patient's severe mental disorder is not in remission or*
7 *cannot be kept in remission without treatment and that by reason*
8 *of his or her severe mental disorder, the patient represents a*
9 *substantial danger of physical harm to others. The time limits of*
10 *this subdivision are not jurisdictional. The recommitment*
11 *proceeding shall be conducted in accordance with the provisions*
12 *of this section.*

13 (f) Any commitment under this article places an affirmative
14 obligation on the treatment facility to provide treatment for the
15 underlying causes of the person's mental disorder.

16 (g) Except as provided in this subdivision, the person committed
17 shall be considered to be an involuntary mental health patient and
18 he or she shall be entitled to those rights set forth in Article 7
19 (commencing with Section 5325) of Chapter 2 of Part 1 of Division
20 5 of the Welfare and Institutions Code. Commencing January 1,
21 1986, the State Department of Mental Health may adopt regulations
22 to modify those rights as is necessary in order to provide for the
23 reasonable security of the inpatient facility in which the patient is
24 being held. This subdivision and the regulations adopted pursuant
25 thereto shall become operative on January 1, 1987, except that
26 regulations may be adopted prior to that date.